

1995

CTX Financial v. Caroline Murphy, Harry Murphy, AAA Jewelers & Loans, Mike Vardakis, LeGrand L. Christensen : Brief of Appellant

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

~~UTAH COURT OF APPEALS~~
BRIEF

CTX FINANCIAL, a Utah corporation	:	UTAH
	:	DOCUMENT
Plaintiff and Appellee,	:	KFU
	:	50
v.	:	A10
	:	DOCKET NO. <u>9500 27 CA</u>
CAROLYN MURPHY, HARRY MURPHY,	:	Case No. 950027-CA
AAA JEWELERS & LOANS, MIKE	:	
VARDAKIS, LeGRAND L. CHRISTENSEN,	:	Priority No. 15
	:	
Defendants, Appellees	:	
and Appellant.	:	

BRIEF OF APPELLANT

APPEAL FROM JUDGMENT OF THIRD JUDICIAL DISTRICT COURT
FOR SALT LAKE COUNTY, STATE OF UTAH
Honorable Timothy R. Hanson, District Judge

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COURT OF APPEALS

IN THE UTAH COURT OF APPEALS

CTX FINANCIAL, a Utah corporation	:	
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Plaintiff and Appellee,	:	
	:	
v.	:	
	:	
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PARTIES TO THE PROCEEDINGS IN THE
DISTRICT COURT

The caption of the case on appeal contains the names of
all parties to the proceedings in the district court.

TABLE OF CONTENTS

	<u>Page</u>
JURISDICTION OF THE APPELLATE COURT	1
STATEMENT OF THE ISSUES PRESENTED FOR REVIEW	1
STATUTES AND RULES WHOSE INTERPRETATION IS OF CENTRAL IMPORTANCE TO THE APPEAL	3
STATEMENT OF THE CASE	3
Nature of the Case	3
Course of Proceedings	3
STATEMENT OF FACTS	4
A. Ownership Of The "B" Piano	4
B. Pawn Transactions	7
C. Divorce Proceedings	9
D. Knowledge of the Pawn Transactions	10
E. Carolyn's Testimony	11
SUMMARY OF ARGUMENT	12
ARGUMENT	12
Introduction	12
1. The Existence of a Marital Relationship Between Mr. and Mrs. Murphy Did Not Automatically Give To Each Of Them An Ownership Interest In Property Owned By The Other. The Piano Was Not Marital Property . . .	14

2.	A Purchaser of Personalty Cannot Take Title To The Property When The Seller Has No Ownership Interest In It And The True Owner Has No Knowledge, And Has Given No Permission For, The Sale. Mike Vardakis Could Not Take Title To The Piano From Mrs. Murphy	18
----	--	----

CONCLUSION	21
------------	-----------	----

ADDENDUM:

- A. Memorandum Decision
- B. Findings of Fact and Conclusions of Law
- C. Judgment

TABLE OF AUTHORITIES

Page

CASES

<u>Alta Industries, Ltd. v. Hurst</u> , 846 P.2d 1282 (Utah 1993) . . .	2
<u>Doelle v. Bradley</u> , 784 P.2d 1176 (Utah 1989)	2
<u>McKnight v. State Land Board</u> , 381 P.2d 726, 14 Utah 2d 726 (1963)	17
<u>McMahan v. Dees</u> , 873 P.2d 1172 (Utah App. 1994)	2
<u>Sorenson v. Kennecott-Utah Copper Corp.</u> , 873 P.2d 1141 (Utah App. 1994)	2
<u>Swartz v. White</u> , 13 P.2d 643, 80 Utah 150 (1932)	20
<u>United Park City Mines Co. v. Greater Park City Co.</u> , 870 P.2d 880 (Utah 1993)	2
<u>Western Surety Co. v. Redding</u> , 626 P.2d 437 (Utah 1981) . . .	18

STATUTES

Utah Code Ann. § 30-2-1 (1953)	16
Utah Code Ann. § 30-2-3 (1953)	16
Utah Code Ann. § 30-2-6 (1953)	16
Utah Code Ann. § 78-2a-3(k) (1953)	1

OTHER AUTHORITIES

63A Am. Jur. 2d, <u>Property</u> , § 44	18
77 Am. Jur. 2d <u>Vendor and Purchaser</u> § 635 (1993)	18

	<u>Page</u>
C. Smith and R. Boyer, <u>Survey of the Law of Property</u> , 479 (3d Ed. 1981)	19
Prosser, <u>Handbook of the Law of Torts</u> (4th Ed. 1971) at 84 .	20

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Defendants, Appellees	:	
and Appellant.	:	

JURISDICTION OF THE APPELLATE COURT

The Court of Appeals has jurisdiction pursuant to Utah Code Ann. § 78-2a-3(k) (1953). The appeal was transferred to the Court of Appeals from the Utah Supreme Court.

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

The issues presented for review are these:

1. Does the existence of a marital relationship between two people automatically give to each of them an ownership interest in property owned by the other?
2. Does a purchaser of personalty take title to the property when the seller has no ownership interest in it

and the true owner has no knowledge, and has given no permission for, the sale?

The district court's findings of fact are reviewed under a clearly erroneous standard. Alta Industries, Ltd. v. Hurst, 846 P.2d 1282 (Utah 1993); Sorenson v. Kennecott-Utah Copper Corp., 873 P.2d 1141 (Utah App. 1994). The findings of fact are clearly erroneous if they are so lacking in support as to be against the clear weight of the evidence. Doelle v. Bradley, 784 P.2d 1176 (Utah 1989); Sorenson, supra at 1147.

The district court's conclusions of law are reviewed for correctness. United Park City Mines Co. v. Greater Park City Co., 870 P.2d 880 (Utah 1993); McMahan v. Dees, 873 P.2d 1172 (Utah App. 1994).

This action was tried to the district court sitting without a jury. Appellant appeals the adequacy and correctness of the district court's findings of fact and conclusions of law. The findings and conclusions were made after the close of trial and after the court had taken the matter under advisement. Appellant could not voice his criticism of the district court's decision until after it had completed its review. Accordingly, Appellant timely filed with the district court a motion to amend the findings, to make additional findings, and to amend the legal

conclusions and judgment accordingly. R. 855. The motion was denied. R. 900. The issues now are raised on appeal.

STATUTES AND RULES WHOSE INTERPRETATION IS OF
CENTRAL IMPORTANCE TO THE APPEAL

There are no specific statutes or rules whose interpretation will determine this appeal.

STATEMENT OF THE CASE

Nature of the Case

This action was brought to determine the ownership of personal property.

Course of Proceedings

The Complaint was filed on February 27, 1992. R. 2. Discovery was undertaken and completed. Defendants LeGrande Christensen, AAA Jewelers & Loans and Mike Vardakis settled with plaintiff CTX Financial. R. 746, 777. Defendant Carolyn Murphy filed a petition in bankruptcy and all action against her stopped. R. 839; Tr. 924-926, 1063. Trial was held before the district court, sitting without a jury, on March 7-8, 1994. Defendants Mike Vardakis and Harry Murphy pursued at trial their competing claims for ownership of an antique piano (Tr. 924), and Harry Murphy also pursued his cross-claim against defendant

LeGrande Christensen for ownership of an antique silver service. The court took the matter under advisement.

On April 5, 1994, judgment was granted in favor of Harry Murphy on his cross-claim against LeGrande Christensen. R. 793. On that same day the district court filed a Memorandum Decision¹ disposing of the parties' claims for the piano. R. 779. Findings of Fact and Conclusions of Law² and Judgment³ were filed on June 22, 1994. R. 838, 852. A motion was made to amend the findings, conclusions and judgment. R. 855. It was denied on October 12, 1994. R. 901.

STATEMENT OF FACTS

A. Ownership Of The "B" Piano.

1. Defendant Harry Murphy married co-defendant Carolyn Murphy in 1955. Tr. 990, 1034.

2. In 1965 or 1966, he purchased a Mason & Hamblin semi-concert grand piano, model "BB," from the San Rafael Music Company. Tr. 990, 1018, 1038. He previously had spoken with with someone at the store and expressed an interest in purchasing

¹ The Memorandum Decision is included in Addendum A.

² The Findings of Fact and Conclusions of Law are included in Addendum B.

³ The Judgment is included in Addendum C.

a Mason & Hamblin piano. He was told the store was expecting one. When it arrived, he was notified, made an inspection and purchased it. Tr. 1038.

3. Harry received a bill of sale made to him alone. Tr. 1018-1019.

4. He financed the purchase through the music company. Tr. 991, 1018. Carolyn did not sign any of the financing documents. Tr. 1018.

5. Harry made payments by check every month. Tr. 1019. Each check was drawn on an account held only in his name. Tr. 1019. Funds deposited in his checking account came solely from his employment. Tr. 1020.

6. Only Harry was employed, and he was responsible for payment of family expenses and for the purchase of all household furnishings. Tr. 996.

7. Carolyn had her own checking account. Tr. 1019. Funds deposited in her account came from Harry. Tr. 1020. She was not then employed outside the home. Tr. 996, 1021, 1052.

8. Carolyn began working part-time in the late 1960's and full-time in the late 1970's. Tr. 996. When she worked full-time, she contributed to the household expenses. Tr. 997, 1053.

9. Harry bought the piano to encourage his childrens' music talents. Tr. 1038-1039.

10. There was not another piano in the household. Tr. 1039.

11. In 1969, Carolyn was given a Mason & Hamblin semi-concert grand piano, model "AA." It was a gift to her from the widower of the childrens' piano teacher. Tr. 1017, 1040.

12. Carolyn and the Murphys' three children played piano. Harry did not. Tr. 994.

13. The Murphys' children played on both the "A" and "B" pianos. Tr. 1017.

14. Carolyn periodically gave lessons to other children. The lessons were given on both the "A" and the "B" pianos. Tr. 994-995.

15. The money she earned from those lessons was hers. Harry did not know what she did with it. Tr. 995.

16. Carolyn did not pay Harry to use the "B" piano and it was not necessary that she ask him for permission to use it. Tr. 995.

17. The "B" piano was tuned approximately every six months. Both Mr. and Mrs. Murphy arranged for the tuning. Tr. 995-996.

18. They both cleaned the "B" piano. Tr. 996.

19. The Murphys had an understanding that the "A" piano belonged to Carolyn and the "B" piano belonged to Harry. They maintained that distinction over the course of their marriage. Tr. 1015-1016, 1040, 1054-1055.

B. Pawn Transactions.

20. Plaintiff CTX Financial is a pawn shop. Tr. 950.

21. Michael Wright, the office manager for CTX Financial, testified at trial. Tr. 950.

22. He testified that he first met Carolyn in 1989 when she requested CTX Financial to pawn two pianos which she said she owned. Tr. 950-951. One of those pianos was the "B" piano. Tr. 952.

23. Carolyn pawned both pianos. Tr. 951.

24. CTX Financial did not take possession of either piano. It did not want to assume responsibility for their storage and Carolyn told CTX Financial that she was teaching on them and needed them for her work. Tr. 953. On one occasion, however, Mr. Wright visited Carolyn's home and inspected the pianos. Tr. 960.

25. Carolyn subsequently entered into six other, separate pawn transactions over the following three years, from

1989 into 1991. At least one again involved the "B" piano. Tr. 955, 972-973.

26. In each transaction CTX Financial required Carolyn to represent that she alone owned the personalty she proposed to pawn, that she had good title to it and that she had the right to sell it. Tr. 974.

27. Near the end of these multiple transactions with Carolyn, CTX Financial had exacted collateral from her which consisted of all the household furnishings then located in her residence. Tr. 977-979.

28. Mr. Wright testified he knew Carolyn had children and that she had a husband. He did not know whether she still was married or divorced or whether she and her husband lived together or apart. Nevertheless, Mr. Wright still exacted from Carolyn a security interest in all of her household furnishings. Tr. 979-983.

29. Mr. Wright testified that during one pawn transaction in 1991, Carolyn told him she intended to use the money loaned on the pawn for her business (the sale of books to the public). Tr. 957-958.

30. Defendant Mike Vardakis testified that he met Carolyn in February 1991 to purchase from her the "B" piano. Tr. 986.

31. Carolyn gave him a bill of sale in which she represented that she owned the piano. Tr. 986.

32. Mr. Vardakis had not known Carolyn before the sale, and he did not know (or ask) whether she was married. Tr. 988.

C. Divorce Proceedings

33. The Murphys filed for divorce in the Third Judicial District Court For Salt Lake County, Utah, on August 17, 1990. They separated on approximately September 1. Tr. 992, 1037.

34. When they separated Harry did not take with him the "B" piano. Tr. 992, 1037.

35. In 1989-1990, before the Murphys separated, Carolyn usually paid rent for the family, although Harry paid it on occasion. He did pay all other family expenses, however. Tr. 997, 1046.

36. At the time of the pawn transactions, Carolyn was employed selling books. Harry knew nothing about her business. Tr. 997, 1036-1037.

37. Carolyn did not make a claim for the "B" piano in the divorce action. Tr. 992-993. Harry, on the other hand, considered it his property and asked it be awarded to him. Tr. 993.

38. The "B" piano was awarded to Harry as his property in the decree of divorce. Plaintiff's Trial Exhibit 23.

D. Knowledge of the Pawn Transactions.

39. Harry did not know Carolyn had used his property to collateralize her pawn transactions until the morning they both appeared before Judge Pat Brian in August 1991 to finalize their divorce. Tr. 993-994, 1034, 1056-1058; Plaintiff's Trial Exhibit 23.

40. He did not sign any of the pawn documents. Carolyn never showed them to him or discussed using as collateral any of the personalty identified in the documents. Tr. 1035.

41. Harry never authorized Carolyn to use any of his property as collateral or to sell it. Tr. 1035.

42. She never told him she was borrowing money or selling possessions to raise funds. Tr. 1036.

43. Carolyn never asked Harry for permission to sell the "B" piano, to pawn it, or to use it as collateral. Tr. 1040.

44. Harry never received money from his wife. Tr. 1036. And, he had no knowledge of what she did with the money she had received from CTX Financial or Mr. Vardakis. Tr. 1036.

E. Carolyn's Testimony.

45. Carolyn was called as a witness at trial. Tr. 1063.

46. She admitted Harry had purchased the "B" piano. Tr. 1070. She also admitted that she had not asked him for permission to sell the piano or to collateralize it, and she conceded that to the extent she sold or otherwise used the piano, she did so without his knowledge. Tr. 1070-1071.

47. Carolyn testified that she did not discuss her pawn transactions with Harry, either in advance or afterwards. Tr. 1071.

48. Carolyn refused to answer other questions at trial for fear her answers might incriminate her. Tr. 1063-1070. Accordingly, the district court took judicial notice of an affidavit she previously had made in the case on April 20, 1993. Tr. 1074. In the affidavit, Carolyn testified:

. . .

3. In the mid-1960's, Harry purchased a Mason & Hamblin semi-concert grand piano (Model BB, No. 2536)

for himself. He purchased the piano with his own funds.

4. I did not own the piano and I did not have an ownership interest in the piano.

5. The piano was at all times the property of Harry Murphy.

6. At no time did I ever ask Harry for, or receive from him, his permission to sell his piano or to use it as collateral for any loan. He did not have knowledge that I allegedly did so, and he only learned of such allegations on the day of our divorce.

Tr. 324-325.

SUMMARY OF ARGUMENT

1. All evidence received at trial showed that ownership of the "B" piano always rested with Mr. Murphy. It was his sole property. There is no evidence to the contrary.

2. Mrs. Murphy did not have an ownership interest in the "B" piano. Therefore, when she sold it to Mr. Vardakis, without Mr. Murphy's permission or knowledge, Mr. Vardakis did not acquire any interest in it. He could take from Mrs. Murphy no greater title than she had.

ARGUMENT

Introduction

Carolyn Murphy sold, pledged or otherwise encumbered household furnishings and personalty, specifically including an

antique, semi-concert grand piano. She dealt with a pawn shop (plaintiff CTX Financial) and an individual employee (defendant Mike Vardakis) of another pawn shop (AAA Jewelers & Loans). Carolyn's transactions with CTX spanned three years (1989-1991); she had a single transaction with Mr. Vardakis (1991). Ms. Murphy's former husband, defendant-appellant Harry Murphy, knew nothing of the transactions and he had not given her permission to sell or dispose of any property which was his or which they owned together as part of their marital property. At the time of the transactions the Murphys were separated and parties to a divorce action pending in the Third Judicial District Court For Salt Lake County, Utah.

The district court generally found the piano to be marital property, jointly owned by Carolyn and Harry. The court found Mr. Vardakis was an innocent purchaser of the piano and, for that reason, he took Mr. Murphy's one-half interest in the piano, even though Mr. Murphy had no notice of the piano's sale by Mrs. Murphy.

Mr. Murphy claims ownership of the piano.

1. The Existence of a Marital Relationship Between Mr. and Mrs. Murphy Did Not Automatically Give To Each of Them An Ownership Interest In Property Owned By The Other. The Piano Was Not Marital Property.

The district court determined the "B" piano was marital property owned jointly by Mr. and Mrs. Murphy. That determination is wrong, and the court's findings and conclusions on the issue are not supported by the evidence. Each is discussed below.

Finding No. 6. The court found that Mrs. Murphy used the proceeds from her transactions for marital expenses. There was no such evidence received at trial. Only four witnesses were called to testify: Mrs. Murphy, Mr. Murphy, Michael Wright and Mr. Vardakis. Mrs. Murphy neither was questioned nor did she offer testimony about her use of the proceeds. Mr. Murphy testified that he did not know what she had done with the proceeds but that he did not receive any of it. Mr. Vardakis was not asked the question (nor was he in a position to know). Only Mr. Wright was examined on the issue. He testified, under cross-examination by his own lawyer, that during one loan transaction Mrs. Murphy had told him she needed the money to finance her business activities. Tr. 957-958. Moreover, the Murphys were separated, incident to their divorce action, through most of the

time Mrs. Murphy made her transactions. To the extent she used the proceeds to pay household expenses, the expenses were hers alone, not his.

That is the only testimony or evidence received on the issue of Mrs. Murphy's use of the property. That being the case, the only findings that can be made are, first, that Mr. Murphy did not knowingly receive any of the proceeds and, second, that the proceeds were used for Mrs. Murphy's personal activities.

Finding of Fact No. 6 and Conclusions of Law Nos. 2 and 3 are not supported by the evidence.

Finding No. 14. Mr. Murphy testified that he was the only one working and that he paid all of the expenses associated with the "B" piano, including its purchase, tuning and maintenance. There was no other evidence.

Finding of Fact No. 14 and Conclusions of Law Nos. 2 and 3 are not supported by the evidence.

Finding Nos. 17-19. The district court found that property purchased during the Murphys' marriage was presumed to be joint marital property. The evidence relied upon by the court shows only that the piano was in the marital residence and that everyone in the Murphy family had access to it.

The existence of a marital relationship between two people does not automatically give to each of them an ownership interest in property owned by the other. There is no prohibition on separate ownership of property by any individual even though he or she happens then to be married. In Utah, spouses can purchase and own property individually during marriage. See Utah Code Ann. § 30-2-1 (1953). They can transfer property between them during marriage. See Utah Code Ann. § 30-2-3 (1953). And, each can bring legal action against the other to protect their individual property interests. See Utah Code Ann. § 30-2-6 (1953). Those principles apply here. Mr. Murphy owned the piano and maintained it, although everyone in his family had access to it. His permissive use of the property does not disprove his individual ownership.

Nevertheless, the sole issue is properly this: Who owned it? Mr. and Ms. Murphy offered testimony on that issue, and they were the only ones who truly knew the ownership history of the piano. Their evidence was that Mr. Murphy had found the piano, purchased it and that it was always considered to be his sole property. Mrs. Murphy later acquired another piano which was treated by all family members as hers.

Findings of Fact Nos. 17-19 and Conclusions of Law Nos. 2 and 3 are not supported by the evidence.

Finding No. 20. Mr. Murphy filed in February 1991 a Financial Declaration and Settlement Proposal in his divorce action. He itemized the parties' joint marital debts and then specifically listed a small number of property items which could be sold to retire them. Both the "A" and "B" pianos were identified. Mr. Murphy testified at trial that he proposed to sell both pianos, his and Mrs. Murphy's, because they were the two most valuable items of personalty and the parties had substantial debt. He did not concede in his divorce filings, nor in testimony before the district court, that the "B" piano was not his alone. Tr. 1059-1061.

Finding of Fact No. 20 and Conclusions of Law Nos. 2 and 3 are not supported by the evidence.

Finding No. 21. Ms. Murphy's affidavit and her testimony before the district court were made under oath, unlike her prior representations to CTX and Mr. Vardakis. The purpose of an oath is to impress upon the witness the solemnity and significance of the occasion and the need for honesty. See McKnight v. State Land Board, 381 P.2d 726, 733-736, 14 Utah 2d 726 (1963). Ms. Murphy's statements under oath, particularly in

light of her discussion with the district court about her rights against self- incrimination, ought to give her testimony more credibility than her prior statements. It is more reasonable to assume, and likely, that she spoke the truth when on the witness stand. Accordingly, her courtroom testimony that Mr. Murphy owned the piano should be given more credibility.

Finding of Fact No. 21 and Conclusions of Law Nos. 2 and 3 are not supported by the evidence.

2. A Purchaser of Personalty Cannot Take Title To The Property When The Seller Has No Ownership Interest In It And the True Owner Has No Knowledge, And Has Given No Permission For, The Sale. Mike Vardakis Could Not Take Title To The Piano From Mrs. Murphy.

Finding No. 26. The district court found Mr. Vardakis was an innocent purchaser and, for that reason, the court determined he acquired Mr. Murphy's interest in the "B" piano. The court's conclusion is contrary to law.

No seller can give better title to property than he or she has. See Western Surety Co. v. Redding, 626 P.2d 437 439 (Utah 1981) (thief cannot convey title to vehicle, even to unsuspecting purchaser). That is true in real property conveyances. See generally 77 Am.Jur. 2d Vendor and Purchaser § 635 (1993). It is true for personal property, too. See generally 63A Am. Jur. 2d, Property, § 44. The rule is this:

The basic common law rule is that one cannot pass a better title than that which he has. Similarly, a purchaser can acquire no better title than that of his vendor.

A thief has no title in the stolen goods, and a purchaser from the thief gets no title.

C. Smith and R. Boyer, Survey of the Law of Property, 479 (3d Ed. 1981). The treatise explains the rules with the following hypothetical and discussion:

CASE 315: A stole B's property and sold it to C, an innocent purchaser for value without notice of the theft. B discovered these facts and demanded that C return the chattels which were still in his possession, and also pay him for the value of that stolen property which C sold to a third person. C refused, and B filed suit. May B recover?

The answer is yes. A thief acquires no title to the goods stolen and he can pass none. The foundation rule at common law is that a purchaser can acquire no better title than that which his vendor has. To this rule there are some exceptions, but the instant case is not within any of the exceptions. In a case such as this one, the law must decide between two innocent parties -- the owner whose property was stolen and the innocent purchaser who was misled into buying stolen goods. It is equally harsh on whoever must suffer the loss -- the innocent owner or the innocent purchaser. The equities are equal; therefore, the legal title prevails. Note that the innocent purchaser must not only return the goods still in his possession, but that he also must pay the value of the goods which he sold. Such wrongful sale by the purchaser C, was a conversion of B's goods regardless of the innocence of C. Thus, B can recover. . .

Id.⁴ The law is the same in Utah. See Swartz v. White, 13 P.2d 643, 645, 80 Utah 150 (1932) ("It is the general rule 'that no one can transfer a better title than he has ...'; 'one who acquires property by theft, or one who by fraud acquires possession of personal property for a particular purpose with the intention of appropriating the property to his own use and without an intention on the part of the owner to transfer title to him, cannot transfer a good title.')."

Mr. Vardakis did not acquire Mr. Murphy's interest in the piano. To the extent Mr. Murphy owned it completely, Mr. Vardakis took nothing. To the extent Mr. Murphy owned one-half (as his position of joint marital property), Mr. Vardakis acquired Ms. Murphy's portion.

Finding of Fact No. 66 and Conclusions of Law Nos. 6 and 8 are not supported by the evidence.

⁴ Prosser, looking at the issue as a tort, notes:

Upon the same basis, a bona fide purchaser of goods from one who has stolen them, or who merely has no power to transfer them, becomes a converter when he takes possession to complete the transaction.



Prosser, Handbook of the Law of Torts (4th Ed. 1971) at 84. See also (Second) Restatement of Torts, § 229.

CONCLUSION

Mr. Vardakis did not acquire an ownership interest in the piano. The ruling of the district court should be reversed and the piano be awarded to Mr. Murphy as his sole property.

DATED: May 5, 1995.

MOYLE & DRAPER, P.C.

By  
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CERTIFICATE OF SERVICE

I certify that on May 5, 1995, two copies of the Brief of Appellant were mailed to each of the following:

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A handwritten signature in cursive script, appearing to read "Scott O. Mercer", is written over a horizontal line.

CLERK OF DISTRICT COURT
THIRD JUDICIAL DISTRICT

APR 5 1994

Evelyn Thompson
SALT LAKE COUNTY

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

CTX FINANCIAL, a Utah corporation,	:	MEMORANDUM DECISION
	:	
Plaintiff,	:	CASE NO. 920901080
	:	
vs.	:	
	:	
CAROLYN MURPHY, HARRY MURPHY, AAA JEWELERS & LOANS, MIKE VARADAKIS, LeGRANDE L. CHRISTENSEN,	:	
	:	
Defendants.	:	

The above-referenced matter came before the Court for trial on March 7, 1994. At the commencement of the trial, the Court was advised regarding the status of the various parties. In that regard, the Court understands that the defendant Carolyn Murphy has filed bankruptcy, which continues to pend. AAA Jewelers and Varadakis are active parties and have apparently paid the plaintiff CTX Financial for their claimed interest in the piano, which is the subject of this suit. CTX has dismissed its claims against AAA and Varadakis, and CTX agreed to indemnify AAA and Varadakis up to the sum of \$6,000 for any losses that Varadakis and AAA Jewelers may suffer as a result of the asserted claim by defendant Harry Murphy against the piano in question. Defendant Harry Murphy remains an active defendant in the suit, asserting his claim of ownership in

the subject piano, and the defendant LeGrande L. Christensen has apparently disclaimed any interest he may have in the piano in question and did not appear. Carolyn Murphy appeared as a witness, with the understanding that any claims asserted against her or by her are stayed as a result of her bankruptcy.

Based on the foregoing, the Court understood that the principal contestants in this proceeding, based upon the various status of the various plaintiffs and defendants, are CTX on its individual claims asserted by Varadakis and Varadakis' individual (AAA) claims against the claims of Harry Murphy with regard to the ownership in a piano which was described as the "B" piano.

At the conclusion of the evidence, the Court heard arguments of counsel and took the matter under advisement to consider the single issue that was presented during the course of the trial, to wit: who was the proper entity to have title to the piano in question?

The evidence in this case shows that Carolyn Murphy is the former wife of defendant Harry Murphy, and that during the course of their marriage she utilized the "B" piano as collateral for various loans she obtained. In fact, the evidence shows that she utilized all the marital household property, including another piano, and all the household furnishings as collateral for various loans she obtained from CTX Financial.

The evidence shows and the Court finds that Carolyn Murphy at no time prior to the divorce between she and defendant Harry Murphy disclosed to Mr. Murphy the fact that she had pawned or otherwise indebted the family furniture and furnishings to CTX Financial. Ms. Murphy has testified, and the Court finds her testimony accurate that the money she obtained in the loans was for the most part used for marital purposes, including her own support.

The evidence further shows and the Court finds that Mrs. Murphy made a number of representations, both in writing and orally, that she was the sole owner of the property, including the "B" piano, that she was giving as collateral for the various loans she obtained, and that there were no liens against it. As indicated, there were a number of loans made by CTX Financial to the defendant Carolyn Murphy, ultimately resulting in Mrs. Murphy pledging to CTX Financial for various loans all the household furniture and furnishings of all kinds. The evidence shows and the Court finds that representatives of CTX Financial were aware that she was married, but apparently made no inquiry or had any contact with Harry Murphy regarding any potential interest that he may have had in any of the pawned furniture and furnishings. CTX Financial allowed Mrs. Murphy to retain possession of the piano in question, even after it was pawned, as well as the majority, if not all of

the other furniture and furnishings she had pawned to CTX Financial.

Defendant Harry Murphy takes the position and has testified that the "B" piano was his sole and separate property, and therefore his former spouse, Carolyn Murphy, had no interest in said property and accordingly no right to pawn the property, giving it as collateral to CTX Financial, even though she had represented that it was her property. CTX Financial takes the position that the piano was marital property, and inasmuch as Carolyn Murphy would have had a marital interest in the property, she had the right to pawn it, and if it is lost because of failure to repay the loans, which occurred in this case, Mr. Murphy's claim must be against Carolyn Murphy, who allegedly inappropriately disposed of his share of the marital assets.

Mr. Varadakis and AAA Jewelers take the position that Mr. Varadakis purchased the piano directly from Mrs. Murphy, and as such Mr. Varadakis claims that he is entitled to ownership of the piano. Mr. Varadakis' relationship with the defendant Carolyn Murphy was not in the capacity of using the piano as collateral for a loan, but rather an outright purchase as evidenced by a bill of sale. Mr. Varadakis testified that he purchased the piano for what he believed to be a fair price. He examined the piano and was told

by Mrs. Murphy, both orally and in connection with the bill of sale that he received, that she owned the property and had the right to sell it. He claims status as a bona fide purchaser under the circumstances.

The initial issue is whether Mrs. Murphy had any interest in the "B" piano that CTX claims she pawned, or Mr. Varadakis claims that she sold. In that regard, Harry Murphy testified that in the mid-1960's he purchased the property and that his intent was to purchase it as his sole and separate property. He asserts that his wife, Carolyn Murphy, never had any interest in the piano, and as between he and his wife, it was always considered to be his separate property. He testified that he paid the payments on the property out of his checking accounts. Mr. Murphy further testified that Carolyn Murphy had a piano given to her by a friend that was her sole and separate piano, and that accordingly each had one of the pianos in the household as their separate property. Mr. Murphy testified that he allowed his children and Mrs. Murphy to use the piano, both to play and to give piano lessons, and that both of them were involved in the maintenance (tuning and such) of the piano in question. During the mid-1960's Mr. Murphy was the sole income producing spouse in the marriage. Mrs. Murphy was a homemaker involved with the children. Apparently her only income

producing activity was minor income from music lessons that she gave on either one or both of the pianos that were in the household in the 1960's.

As indicated above, Mrs. Murphy has represented both in writing and orally to CTX and Varadakis, among others, that she had an ownership interest in the property. Mrs. Murphy has filed an Affidavit in this case in connection with the pretrial Motions that were filed, testifying that the property was separate property of Harry Murphy and that she had no interest. When called to testify during the course of the trial, Mrs. Murphy declined to answer the question as to whether or not she asserted an ownership in the property on the basis that her answer may tend to subject her to potential criminal liability, and asserted her right against self-incrimination under both the State and Federal Constitutions.

The actual manner in which the piano was used during the course of the marriage and how it was treated during the course of the divorce between the parties, as well as the manner in which the parties handled their finances in the mid-1960's during the course of their marriage, leads this Court to the conclusion that the now stated intention of Mr. Murphy that the "B" piano was to be his sole and separate property is not reflective of the true status of the "B" piano. The better evidence supports the proposition that

the "B" piano was marital property. The property acquired during the course of the marriage carries a presumption that it is marital property. The statements of Mr. Murphy do not overcome that presumption, particularly in view of the fact that the piano was treated in the household as marital property; the entire family used it; Mrs. Murphy was involved in maintaining it, along with Mr. Murphy; she apparently gave piano lessons on the "B" piano, as well as the other piano; and it appears to have been treated during the course of the marriage as joint property. The fact that Mr. Murphy made the payments is not persuasive, inasmuch as he was the only income producing spouse during the time period in question, and the fact as he testified that he made the payments out of his checking account, do not override the presumption and other factors that the "B" piano was considered to be a marital asset.

Further, the filings of the parties in the divorce action does not suggest, nor was there ever a claim asserted in the divorce pleadings, that the "B" piano was the sole and separate property of Mr. Murphy. The "B" piano was awarded to him as his sole and separate property as a result of the divorce Decree, but as indicated above, there is nothing in the original filings of Mr. Murphy or the proposed resolutions submitted in the divorce court by Mr. Murphy that would suggest that he claimed a separate

ownership in the "B" piano. Mrs. Murphy's testimony adds nothing to Mr. Murphy's claim, inasmuch as she has made various representations regarding ownership interest in the piano at various times, and her testimony is inherently unbelievable on that subject in this case for either proposition, that is, whether she had an ownership interest or whether Mr. Murphy was the sole owner.

Based upon the foregoing, the Court concludes that the "B" piano was, in fact, marital property and that Mrs. Murphy therefore had a marital ownership interest in that property and the legal right to pawn it or otherwise use it as collateral for loans that she obtained from CTX. The fact that she used the majority, if not all of the funds for marital purposes when she received them contributes to the Court's conclusion in regard to the status of the piano being marital property.

As Mrs. Murphy had a right to utilize the marital property as collateral, it cannot be said that CTX's interest, therefore, does not exist. To the contrary, CTX Financial had an interest in the property pursuant to its taking the property, including the piano, as collateral for loans made to Mrs. Murphy.

Harry Murphy has also asserted that a transfer of the interest in the piano, as well as other items, from CTX Financial to a sister company, Mutual Mortgage, did not come back to CTX Financial

through an appropriate assignment. The evidence shows that there was a written assignment from CTX Financial to Mutual Mortgage, but there is not a written document offered showing that Mutual Mortgage assigned the interest in the property, including the piano, back to CTX Financial. CTX Financial's principal agent, Michael Wright, testified that there was an assignment back to CTX from Mutual Mortgage. While the defendant Harry Murphy, through counsel, questions the validity of the testimony because of the lack of a written document, there is no evidence that would suggest that the testimony of Mr. Wright is not correct, and it was received without objection, even though it may not have constituted the best evidence. The Court is not willing to make the finding that a reassignment did not occur between Mutual Mortgage and CTX Financial in face of the testimony offered by Mr. Wright.

Harry Murphy further asserts that at best, CTX Financial is only entitled to assert a claim against that portion of the piano which the Court has found to be marital property owned by Mrs. Murphy, to wit: 50%. In support of that allegation, Mr. Murphy asserts that the knowledge of CTX's agents that dealt with Mrs. Murphy as she apparently got herself more deeply involved in loans that she was unable to pay, and ultimately ended up pawning and using as collateral all the household furniture and furnishings in

the Murphy home, should place CTX on notice that Mrs. Murphy was encumbering property that was likely marital property to which her spouse, Harry Murphy, had an interest.

In support of that proposition, defendant Murphy's counsel directs the Court's attention to the case of Clearfield State Bank v. Contos, 562 P.2d 622 (Utah 1977). In that case, property that had been pledged to Clearfield State Bank by the debtor husband could not in its entirety be levied upon by the Bank, because the Bank was aware that the property was marital and the wife had not signed the loan agreements. The principal asserted in Clearfield v. Contos, is applicable here. CTX Financial and its agents must have had notice that Mrs. Murphy was using as collateral, property that is commonly considered to be marital property. CTX Financial and its agents were aware that Mrs. Murphy was married, and while one may not be placed on notice, actual or constructive, in an isolated transaction that a marriage party is attempting to encumber the other marriage partner's interest in the property, the fact that all the household furniture and furnishings had been collateralized does constitute constructive notice that the representations being made by Mrs. Murphy that she was the sole owner of all the property in the home were likely incorrect. At

the very least, there was a duty to inquire, which CTX Financial did not do.

Under the circumstances and the facts of this case, this Court concludes that the most interest that CTX Financial can assert against the piano with which we are concerned in this suit is the interest actually owned by Carolyn Murphy, and that is, 50% of its value. Therefore, CTX's claims against the "B" piano are limited to one-half its value.

Turning to the claims of Mike Varadakis and AAA Jewelers, and for purposes of these proceedings the Court considers them one and the same, the Court determines that Mr. Varadakis' position is substantially different than CTX's position.

Mr. Varadakis purchased the piano for consideration from Mrs. Murphy. The transaction was a single, isolated sale. There is nothing in the record that would suggest that Mr. Varadakis was on notice that she did not own the piano as she represented, and because it was a single transaction, there is nothing that would suggest that there was a duty to inquire on the part of Mr. Varadakis as to anyone else's potential interest in the piano. Obviously, Mr. Varadakis took the piano subject to the one-half interest that the Court has determined is appropriate as far as CTX

is concerned, but those issues have been resolved, as the Court understands it, between CTX and Varadakis.

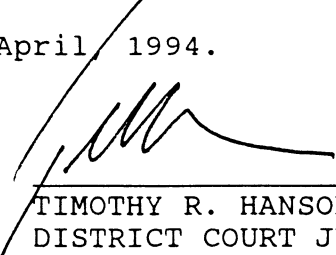
There is nothing in this record that would suggest that Mr. Varadakis was anything other than a bona fide purchaser for value, and as Mrs. Murphy had an interest in the piano which she could sell, Mr. Varadakis is entitled to the ownership of the piano in its entirety, having purchased the same for legitimate consideration without knowledge, actual or constructive, of Harry Murphy's interest as the spouse of Carolyn Murphy. Mr. Murphy's remedy as to the loss of his one-half interest as sold by his spouse to Mr. Varadakis is a claim against Mrs. Murphy for having sold his interest in the "B" piano, and apparently for violating the divorce court's restraining order prohibiting Mrs. Murphy from selling property during the pendency of the divorce proceeding.

The Court then determines that Mr. Varadakis is the party who is entitled to possession and ownership of the "B" piano, and that claims asserted against the piano by the remaining active defendant, Harry Murphy, are not valid against Varadakis' ownership. As between CTX and Harry Murphy and who might be entitled to recover fees from one another, the Court determines that there is not a clear prevailing party, and that those parties should bear their own attorney's fees and costs in these

proceedings. There is no statutory or contractual basis to award Varadakis attorney's fees, however, he is entitled to costs pursuant to Rule 54(b), Utah Rules of Civil Procedure.

Counsel for CTX Financial and Varadakis is to prepare the appropriate set of Findings of Fact, Conclusions of Law, and Judgment, unless the parties agree between them that they are willing to waive Findings of Fact, Conclusions of Law, and merely have a Judgment entered in accordance with this Memorandum Decision relating to the ownership of the piano. If Findings of Fact and Conclusions of Law are not waived by both parties, then the Court expects that the Findings of Fact, Conclusions of Law, and the Judgment will be reviewed by counsel for the defendant Harry Murphy after being prepared by counsel for CTX and Varadakis, and that the Court will ultimately receive an agreed upon form of Findings of Fact, Conclusions of Law, and Judgment which the Court can consider in accordance with Rule 4-501 of the Code of Judicial Administration.

Dated this 5 day of April, 1994.


TIMOTHY R. HANSON
DISTRICT COURT JUDGE

ATTEST

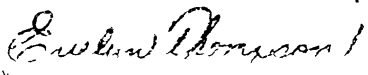
By 
Evelyn Thompson

Exhibit 1

MAILING CERTIFICATE

I hereby certify that I mailed a true and correct copy of the foregoing Memorandum Decision, to the following, this 5 day of April, 1994:

Brenda L. Flanders
Dena C. Sarandos
Attorneys for Plaintiff
56 E. Broadway, Suite 400
Salt Lake City, Utah 84111

Reid E. Lewis
Mark W. May
Attorneys for Harry Murphy
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Scott O. Mercer
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Attorney for Defendant Christensen
311 S. State, Suite 450
Salt Lake City, Utah 84111



JUN 22 1994

Evelyn Thompson
Deputy Clerk

Reid E. Lewis (no. 1951), and
Mark W. May (no. 5512), of
MOYLE & DRAPER, P.C.
600 Deseret Plaza
No. 15 East First South
Salt Lake City, Utah 84111-1915
Telephone: (801) 521-0250

Attorneys for Harry Murphy

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY
STATE OF UTAH

CTX FINANCIAL, a Utah	:	
corporation,	:	
	:	FINDINGS OF FACT AND
Plaintiff,	:	CONCLUSIONS OF LAW
	:	
v.	:	
	:	
CAROLYN MURPHY, HARRY MURPHY,	:	Civil No. 920901080 CN
AAA JEWELERS & LOANS, MIKE	:	
VARDAKIS, LeGRAND L.	:	
CHRISTENSEN,	:	Honorable Timothy R. Hanson
	:	
Defendants.	:	
	:	

This action was tried by the Court, the Honorable Timothy R. Hanson presiding, on March 7-8, 1994. Plaintiff was present and represented by its attorneys, Brenda L. Flanders and Dena C. Sarandos of Flanders & Associates. Defendants AAA Jewelers and Mike Vardakis were present and represented by their trial counsel, Brenda L. Flanders and Dena C. Sarandos of Flanders & Associates. Defendant Harry Murphy was present and represented by his attorneys, Reid E. Lewis and Mark W. May of

Moyle & Draper, P.C. Defendant Carolyn Murphy appeared only as a witness pursuant to subpoena. Defendant LeGrande L. Christensen did not appear and he was not represented. Witnesses were called and examined. Exhibits were received by the Court, and the Court took judicial notice of documents filed as of record. Counsel argued their clients' positions. The Court makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. At the commencement of trial, the Court was advised regarding the status of the various parties. The Court understands defendant Carolyn Murphy has filed bankruptcy, which is pending. AAA Jewelers and Varadakis are active parties and apparently have paid the plaintiff CTX Financial for their claimed interest in the piano, which is the subject of this suit. CTX has dismissed its claims against AAA and Varadakis, and CTX agreed to indemnify AAA and Varadakis up to the sum of \$6,000 for any losses that Varadakis and AAA Jewelers may suffer as a result of the asserted claim by defendant Harry Murphy against the piano in question. Defendant Harry Murphy remains an active defendant in the suit, asserting his claim of ownership in the subject piano, and the defendant LeGrande L. Christensen has apparently disclaimed any interest he may have in the piano in question and did not appear. Carolyn Murphy appeared as a witness, with the understanding that any claims asserted against her or by her are stayed as a result of her bankruptcy.

2. The Court understands the principal contestants in this proceeding, based upon the various status of the various plaintiffs and defendants, are CTX on its individual claims asserted by Varadakis and Varadakis' individual (AAA) claims against the claims of Harry Murphy with regard to the ownership in a piano which was described as the "B" piano.

3. At the conclusion of the evidence, the Court heard arguments of counsel and took the matter under advisement to consider the single issue that was presented during the course of the trial, to wit: who was the proper entity to have title to the piano in question?

4. The evidence in this case shows that Carolyn Murphy is the former wife of defendant Harry Murphy, and that during the course of their marriage she utilized the "B" piano as collateral for various loans she obtained. In fact, the evidence shows that she utilized all the marital household property, including another piano, and all the household furnishing as collateral for various loans she obtained from CTX Financial.

5. The evidence shows and the Court finds that Carolyn Murphy at no time prior to the divorce between she and defendant Harry Murphy disclosed to Mr. Murphy the fact that she had pawned or otherwise indebted the family furniture and furnishings to CTX Financial.

6. Ms. Murphy has testified, and the Court finds her testimony accurate that the money she obtained in the loans was for the most part used for marital purposes, including her own support.

7. The evidence further shows and the Court finds that Mrs. Murphy made a number of representations, both in writing and orally, that she was the sole owner of the property, including the "B" piano, that she was giving as collateral for the various loans she obtained, and that there were no liens against it. As indicated, there were a number of loans made by CTX Financial to the defendant Carolyn Murphy, ultimately resulting in Mrs. Murphy pledging to CTX Financial for various loans all the household furniture and furnishings of all kinds.

8. The evidence shows and the Court finds that representatives of CTX Financial were aware that she was married, but apparently made no inquiry or had any contact with Harry Murphy regarding any potential interest that he may have had in any of the pawned furniture and furnishings.

9. CTX Financial allowed Mrs. Murphy to retain possession of the piano in question, even after it was pawned, as well as the majority, if not all of the other furniture and furnishings she had pawned to CTX Financial.

10. Defendant Harry Murphy takes the position and has testified that the "B" piano was his sole and separate property, and, therefore, his former spouse, Carolyn Murphy, had no interest in the property and accordingly no right to pawn the property, giving it as collateral to CTX Financial, even though she had represented that it was her property.

11. CTX Financial takes the position that the piano was marital property, and inasmuch as Carolyn Murphy would have

had a marital interest in the property, she had the right to pawn it, and if it is lost because of failure to repay the loans, which occurred in this case, Mr. Murphy's claim must be against Carolyn Murphy, who allegedly inappropriately disposed of his share of the marital assets.

12. Mr. Varadakis and AAA Jewelers take the position that Mr. Varadakis purchased the piano directly from Mrs. Murphy, and as such Mr. Varadakis claims that he is entitled to ownership of the piano. Mr. Varadakis' relationship with the defendant Carolyn Murphy was not in the capacity of using the piano as collateral for a loan, but rather an outright purchase as evidenced by a bill of sale.

13. Mr. Varadakis testified that he purchased the piano for what he believed to be a fair price. He examined the piano and was told by Mrs. Murphy, both orally and in connection with the bill of sale that he received, that she owned the property and had the right to sell it. He claims status as a bona fide purchaser under the circumstances.

14. The initial issue is whether Mrs. Murphy had any interest in the "B" piano that CTX claims she pawned, or Mr. Varadakis claims that she sold. In that regard, Harry Murphy testified that in the mid-1960's he purchased the property and that his intent was to purchase it as his sole and separate property. He asserts that his wife, Carolyn Murphy, never had any interest in the piano, and as between he and his wife, it was always considered to be his separate property. He testified that

he paid the payments on the property out of his checking accounts. Mr. Murphy further testified that Carolyn Murphy had a piano given to her by a friend that was her sole and separate piano, and that accordingly each had one of the pianos in the household as their separate property. Mr. Murphy testified that he allowed his children and Mrs. Murphy to use the piano, both to play and to give piano lessons, and that both of them were involved in the maintenance (tuning and such) of the piano in question.

15. During the mid-1960's Mr. Murphy was the sole income producing spouse in the marriage. Mrs. Murphy was a homemaker involved with the children. Apparently, her only income producing activity was minor income from music lessons that she gave on either one or both of the pianos that were in the household in the 1960's.

16. As indicated above, Mrs. Murphy has represented both in writing and orally to CTX and Varadakis, among others, that she had an ownership interest in the property. Mrs. Murphy has filed an Affidavit in this case in connection with the pretrial Motions that were filed, testifying that the property was separate property of Harry Murphy and that she had no interest. When called to testify during the course of the trial, Mrs. Murphy declined to answer the question as to whether or not she asserted an ownership in the property on the basis that the answer may tend to subject her to potential criminal liability,

and she asserted her right against self-incrimination under both the state and federal constitutions.

17. The actual manner in which the piano was used during the course of the marriage and how it was treated during the course of the divorce between the parties, as well as the manner in which the parties handled their finances in the mid-1960's during the course of their marriage, leads this Court to the conclusion that the now stated intention of Mr. Murphy that the "B" piano was to be his sole and separate property is not reflective of the true status of the "B" piano.

18. The better evidence supports the proposition that the "B" piano was marital property. The property acquired during the course of the marriage carries a presumption that it is marital property. The statements of Mr. Murphy do not overcome that presumption, particularly in view of the fact that the piano was treated in the household as marital property; the entire family used it; Mrs. Murphy was involved in maintaining it, along with Mr. Murphy; she apparently gave piano lessons on the "B" piano, as well as the other piano; and it appears to have been treated during the course of the marriage as joint property.

19. The fact that Mr. Murphy made the payments is not persuasive, inasmuch as he was the only income producing spouse during the time period in question, and the fact as he testified that he made the payments out of his checking account, do not override the presumption and other factors that the "B" piano was considered to be a marital asset.

20. Further, the filings of the Murphys in their divorce action do not suggest, nor was there ever a claim asserted in the divorce pleadings, that the "B" piano was the sole and separate property of Mr. Murphy. The "B" piano was awarded to him as his sole and separate property as a result of the Divorce Decree, but as indicated above, there is nothing in the original filings of Mr. Murphy or the proposed resolutions submitted in the divorce court by Mr. Murphy that would suggest that he claimed a separate ownership in the "B" piano.

21. Mrs. Murphy's testimony adds nothing to Mr. Murphy's claim, inasmuch as she has made various representations regarding ownership interest in the piano at various times, and her testimony is inherently unbelievable on that subject in this case for either proposition, that is, whether she had an ownership interest or whether Mr. Murphy was the sole owner.

22. Harry Murphy has also asserted that a transfer of the interest in the piano, as well as other items, from CTX ~~Financial~~ Financial to a sister company, Mutual Mortgage, did not ~~come~~ come back to CTX Financial through an appropriate assignment. The evidence shows that there was a written assignment from CTX Financial to Mutual Mortgage, but there is not a written document offered showing that Mutual Mortgage assigned the interest in the property, including the piano, back to CTX Financial. CTX Financial's principal agent, Michael Wright, testified that there was an assignment back to CTX from Mutual Mortgage. While the defendant Harry Murphy, through counsel, questions the validity

of the testimony because of the lack of a written document, there is no evidence that would suggest that the testimony of Mr. Wright is not correct, and it was received without objection, even though it may not have constituted the best evidence. The Court is not willing to make the finding that a reassignment did not occur between Mutual Mortgage and CTX Financial in face of the testimony offered by Mr. Wright.

23. Harry Murphy further asserts that at best, CTX Financial is only entitled to assert a claim against the portion of the piano which the Court has found to be marital property owned by Mrs. Murphy, to wit: 50%. In support of that allegation, Mr. Murphy asserts that the knowledge of CTX's agents that dealt with Mrs. Murphy as she apparently got herself more deeply involved in loans that she was unable to pay, and ultimately ended up pawning and using as collateral all the household furniture and furnishings in the Murphy home, should place CTX on notice that Mrs. Murphy was encumbering property that was likely marital property to which her spouse, Harry Murphy, had an interest.

24. In support of that proposition, defendant Murphy's counsel directs the Court's attention to the case of Clearfield State Bank v. Contos, 562 P.2d 622 (Utah 1977). In that case, property that had been pledged to Clearfield State Bank by the debtor husband could not in its entirety be levied upon by the Bank, because the Bank was aware that the property was marital and the wife had not signed the loan agreements. The principal

asserted in Clearfield v. Contos, is applicable here. CTX Financial and its agents must have had notice that Mrs. Murphy was using as collateral, property that is commonly considered to be marital property. CTX Financial and its agents were aware that Mrs. Murphy was married, and while one may not be placed on notice, actual or constructive, in an isolated transaction that a married party is attempting to encumber the other marriage partner's interest in the property, the fact that all the household furniture and furnishings had been collateralized does constitute constructive notice that the representations being made by Mrs. Murphy that she was the sole owner of all the property in the home were likely incorrect. At the very least, there was a duty to inquire, which CTX Financial did not do.

25. Turning to the claims of Mike Varadakis and AAA Jewelers, and for purposes of these proceedings the Court considers them one and the same, the Court determines that Mr. Varadakis' position is substantially different than CTX's position.

26. Mr. Varadakis purchased the piano for consideration from Mrs. Murphy. The transaction was a single, isolated sale. There is nothing in the record that would suggest that Mr. Varadakis was on notice that she did not own the piano as she represented, and because it was a single transaction, there is nothing that would suggest that there was a duty to inquire on the part of Mr. Varadakis as to anyone else's potential interest in the piano. Obviously, Mr. Varadakis took

the piano subject to the one-half interest that the Court has determined is appropriate as far as CTX is concerned, but those issues have been resolved, as the Court understands it, between CTX and Varadakís.

CONCLUSIONS OF LAW

1. The property acquired during the course of Carolyn and Harry Murphy's marriage carries a presumption that it is marital property.

2. The "B" piano was, in fact, marital property and that Mrs. Murphy therefore had a marital ownership interest in that property and the legal right to pawn it or otherwise use it as collateral for loans that she obtained from CTX. The fact that she used the majority, if not all of the funds for marital purposes when she received them contributes to the Court's conclusion in regard to the status of the piano being marital property.

3. As Mrs. Murphy had a right to utilize the marital property as collateral, it cannot be said that CTX's interest, therefore, does not exist. To the contrary, CTX Financial had an interest in the property pursuant to its taking the property, including the piano, as collateral for loans made to Mrs. Murphy.

4. The case of Clearfield State Bank v. Contos, 562 P.2d 622 (Utah 1977) is applicable here.

5. The most interest that CTX Financial can assert against the piano with which we are concerned in this suit is the interest actually owned by Carolyn Murphy, and that is, 50% of

its value. Therefore, CTX's claims against the "B" piano are limited to one-half its value.

6. There is nothing in this record that would suggest that Mr. Varadakis was anything other than a bona fide purchaser for value, and as Mrs. Murphy had an interest in the piano which she could sell, Mr. Varadakis is entitled to the ownership of the piano in its entirety, having purchased the same for legitimate consideration without knowledge, actual or constructive, of Harry Murphy's interest as the spouse of Carolyn Murphy.

7. Mr. Murphy's remedy as to the loss of his one-half interest as sold by his spouse to Mr. Varadakis is a claim against Mrs. Murphy for having sold his interest in the "B" piano, and apparently for violating the divorce court's restraining order prohibiting Mrs. Murphy from selling property during the pendency of the divorce proceeding.

8. Mr. Varadakis is the party who is entitled to possession and ownership of the "B" piano, and claims asserted against the piano by the remaining active defendant, Harry Murphy, are not valid against Varadakis' ownership.

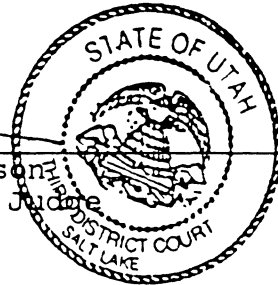
9. As between CTX and Harry Murphy and who might be entitled to recover fees from one another, the Court determines that there is not a clear prevailing party, and that those parties should bear their own attorney's fees and costs in these proceedings.

10. There is no statutory or contractual basis to award Varadakis attorney's fees, however, he is entitled to costs pursuant to Rule 54(b), Utah Rules of Civil Procedure.

June 22, 1998

BY THE COURT:

[Signature]
Timothy R. Hanson
District Court Judge



FORM APPROVED:

Brenda L. Flanders
Dena S. Sarandos
Attorneys for CTX Financial
Trial Counsel for AAA Jewelers
and Mike Varadakis

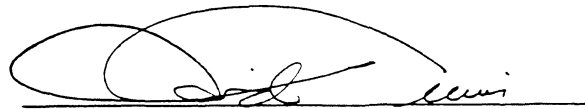
Scott O. Mercer
Attorney for AAA Jewelers and Mike Varadakis

CERTIFICATE OF SERVICE

I certify that on May 24, 1994, a copy of the Findings of Fact and Conclusions of Law was mailed to each of the following:

Brenda L. Flanders
FLANDERS & ASSOCIATES
56 East Broadway
Suite 400
Salt Lake City, UT 84111

Scott O. Mercer
KESLER & RUST
2000 Beneficial Life Tower
36 South State Street
Salt Lake City, UT 84111

A handwritten signature in black ink, appearing to read "Scott O. Mercer", is written over a horizontal line.

Reid E. Lewis (no. 1951), and
Mark W. May (no. 5512), of
MOYLE & DRAPER, P.C.
600 Deseret Plaza
No. 15 East First South
Salt Lake City, Utah 84111-1915
Telephone: (801) 521-0250

FILED DISTRICT COURT
Third Judicial District

JUN 22 1994

Buclynn Thompson
SALT LAKE COUNTY
Deputy Clerk

Attorneys for Harry Murphy

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY
STATE OF UTAH

CTX FINANCIAL, a Utah	:	
corporation,	:	
	:	JUDGMENT
Plaintiff,	:	
	:	
v.	:	
	:	
CAROLYN MURPHY, HARRY MURPHY,	:	Civil No. 920901080 CN
AAA JEWELERS & LOANS, MIKE	:	
VARDAKIS, LeGRAND L.	:	
CHRISTENSEN,	:	Honorable Timothy R. Hanson
	:	
Defendants.	:	
	:	

This action was tried by the Court, the Honorable Timothy R. Hanson presiding, on March 7-8, 1994. Plaintiff was present and represented by its attorneys, Brenda L. Flanders and Dena C. Sarandos of Flanders & Associates. Defendants AAA Jewelers and Mike Vardakis were present and represented by their trial counsel, Brenda L. Flanders and Dena C. Sarandos of Flanders & Associates. Defendant Harry Murphy was present and represented by his attorneys, Reid E. Lewis and Mark W. May of

Moyle & Draper, P.C. Defendant Carolyn Murphy appeared only as a witness pursuant to subpoena. Defendant LeGrande L. Christensen did not appear and he was not represented. Witnesses were called and examined. Exhibits were received by the Court, and the Court took judicial notice of documents filed as of record. Counsel argued their clients' positions. The Court having made its Findings of Fact and Conclusions of Law, hereby grants judgment as follows:

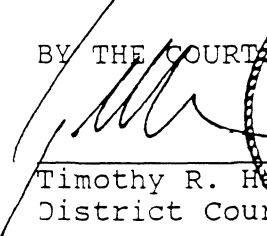
1. Mike Vardakis shall have possession and ownership of the Mason & Hamblin semi-concert grand piano, model B, no. 25369.

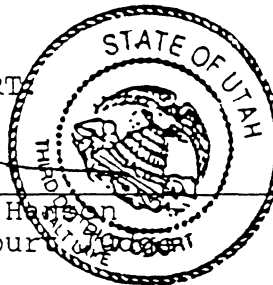
2. The parties shall bear their own attorney's fees.

3. Mike Vardakis is entitled to his costs incurred in this action pursuant to Rule 54(b) of the Utah Rules of Civil Procedure, and all other parties shall bear their own costs.

DATED: June 22, 1994.

BY THE COURT


Timothy R. Harrison
District Court



FORM APPROVED:

Brenda L. Flanders
Dena S. Sarandos
Attorneys for CTX Financial
Trial Counsel for AAA Jewelers
and Mike Vardakis

Scott O. Mercer
Attorney for AAA Jewelers and Mike Vardakis

CERTIFICATE OF SERVICE

I certify that on May 27, 1994, a copy of the Judgment
was hand-delivered to each of the following:

Brenda L. Flanders
FLANDERS & ASSOCIATES
56 East Broadway
Suite 400
Salt Lake City, UT 84111

Scott O. Mercer
KESLER & RUST
2000 Beneficial Life Tower
36 South State Street
Salt Lake City, UT 84111

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